IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 766 of 2004
with
CIVIL APPLICATION No 2709 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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GSRTC

Versus

GITABA AJITSINH ZALA,W/O DECD.AJITSINH C ZALA

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Appearance:
1. First Appeal No. 766 of 2004
MR HARDIK C RAWAL for Petitioner No. 1
MR GK RATHOD for Respondent No. 1-2

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CORAM : HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE A.M.KAPADIA

Date of decision: 05/04/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE M.S.SHAH)

ADMIT. Mr GK Rathod, learned counsel for the respondents waives service of notice of admission.

With the consent of the learned counsel for the parties, the appeal is taken up for final disposal today.

2. In this appeal under Section 30 of the Workmen's Compensation Act, 1923 ("the Act" for short), the Gujarat State Road Transport Corporation, constituted under the provisions of the State Road Transport Corporation Act, 1950, has challenged the order dated 28.1.2003 passed by the Commissioner for Workmen's Compensation, Bhavnagar in Workmen's Compensation Application No. 80 of 2000.

3. There is no dispute about the fact that Ajitsinh C Zala was an employee of the appellant-Corporation who sustained serious injuries and succumbed to them while on duty on 9.9.2000. Hence, the wife and minor daughter of the deceased, the respondents herein, filed the above numbered claim application before the Commissioner on 17.11.2000. After filing the reply, the Corporation deposited the entire amount of compensation as prayed for i.e. Rs.1,86,900/- on 22.11.2002. The Commissioner thereafter heard the parties on the question of interest and penalty to be paid by the employer. By the impugned order, the Commissioner awarded 12% interest for the period from the date of accident i.e. 9.9.2000 till the date of deposit of the principal amount i.e. 22.11.2002. The amount of interest was required to be deposited with the Commissioner within one month from the date of the order i.e. within one month from 28.1.2003. An amount of Rs.49,228/- by way of interest has been deposited with the Commissioner on 16.2.2004.

As regards the penalty, the Commissioner awarded the maximum 50% penalty on the principal amount i.e a sum of Rs.93,450/- has been awarded by way of penalty.

It is the aforesaid order which is under challenge in this appeal.

4. Although the appellant has sought to challenge both the orders awarding interest at the rate of 12% and penalty at the rate of 50%, at the hearing of this appeal, it is not possible for the Corporation to challenge the direction given by the Commissioner for payment of interest at the rate of 12% in view of the categorical provisions contained in sub-section (3)(a) of Section 4-A of the Act which provide that where the employer is in default in paying the compensation due under the Act within one month from the date it fell due, the Commissioner shall direct that the employer shall, in addition to the amount of the arrears, pay simple interest thereon at the rate of 12% p.a. or at such

higher rate not exceeding the maximum of the lending rates of any scheduled bank on the amount due. Since 12% is the minimum rate of interest, the Commissioner did not commit any error in awarding interest at the rate of 12% from the date of the accident.

5. However, the learned counsel for the appellant-Corporation has vehemently challenged the direction given by the Commissioner for payment of 50% penalty. The learned counsel points out that under sub-section (3-A) of Section 4-A, it is only the interest amount which is required to be paid to the workman or his dependents, but the amount of penalty is to be paid to the State Government. It is submitted that apart from the fact that the appellant-Corporation deposited the amount before the Commissioner passed any order on merits directing the Corporation to deposit the amount, the Corporation on its own deposited the amount and the appellant-Corporation is a statutory Corporation constituted under the State Road Transport Corporation Act, 1950; the State Road Transport Corporation is a State within the meaning of Article 12 of the Constitution and the appellant Corporation is under the administrative control of the State Government. In fact on account of the financial constraints, the Corporation has to receive even grants and other financial assistance from the State Government; the appellant-Corporation is not merely a statutory Corporation, but has been carrying on its operations for the benefit of the general public and, therefore, the Commissioner erred in imposing the maximum penalty of 50% without taking into consideration the aforesaid factors.

6. Mr GK Rathod, learned counsel for the respondents has submitted that since the amount of penalty would go to the State Government, the respondents leave it to the Hon'ble Court.

7. Having heard the learned counsel for the parties, we are of the view that there is considerable substance in the submission made Mr Raval, learned counsel for the appellant-Gujarat Road Transport Corporation that the appellant had deposited the amount before the trial commenced. Moreover, the appellant-Corporation is a statutory Corporation constituted under the State Road Transport Corporation Act which on account of its poor financial conditions has to rely on the State Government for grant, loan and other financial assistance. Awarding any substantial amount of penalty would, therefore, mean that one limb of the State is to pay penalty to the another limb.

8. Having regard to the aforesaid facts and circumstances and taking an over all view of the matter, we are of the view that the interests of justice would be served if the direction for payment of 50% penalty given by the Commissioner is modified and the appellant-Corporation is required to pay penalty of only 5% as a token penalty to be paid by one limb of the State to another limb.

9. The appeal is accordingly partly allowed. While the direction given by the Commissioner for Workmen's Compensation in Workmen's Compensation Application No.80 of 2000 for payment of interest at the rate of 12% p.a. is not disturbed, the direction given by the Commissioner for payment of 50% penalty is hereby modified and the appellant-Corporation shall be required to pay only 5% (five per cent) penalty on the principal amount of Rs.1,86,900/-. Accordingly, the amount of penalty deposited before the Commissioner in excess of 5% shall be refunded to the appellant-Corporation within one month from the date of receipt of the writ of this Court.

As regards the amount of Rs.49,228/- deposited by the Corporation towards interest liability, an amount of Rs.40,000/- shall be invested in fixed deposits in the same bank with which the investments out of the principal amount of compensation have been made. Out of Rs.40,000/-, Rs.20,000/- shall be invested in the name of respondent No.1 for a period of five years and another sum of Rs.20,000/- shall be invested in the name of respondent No.2 till respondent No.2 attains majority. The balance amount of Rs.9,228/- shall be paid to respondent No.1 by an "A/c. Payee" cheque.

The five per cent of penalty shall be paid over to the State Government.

10. Since the main appeal is disposed of, Civil Application No. 2709 of 2004 does not survive and is disposed of accordingly.

(M.S. Shah, J.)

(A.M. Kapadia, J.)

sundar/-